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No. ———

IN THE
Supreme Court of the United States
OCTOBER TERM, 1984

MORGAN GUARANTY INTERNATIONAL BANK,
MORGAN GUARANTY TRUST COMPANY OF NEW YORK,
Petitioners,

v.

CITY OF HOUSTON,
HOUSTON INDEPENDENT SCHOOL DISTRICT AND
WILLIAM R. BROWN, JR.,
Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEALS FOR THE FIRST SUPREME JUDICIAL DISTRICT AT HOUSTON, TEXAS

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QUESTION PRESENTED FOR REVIEW

May a state, or its subdivisions, tax the shares of an international bank, chartered under an act of the Congress, when neither the home office of the international bank nor any of its shareholders reside in such state.

THE PARTIES BELOW

Petitioners Morgan Guaranty International Bank and Morgan Guaranty Trust Company of New York were the only plaintiffs below.

Morgan Guaranty International Bank has no subsidiaries not wholly owned. Morgan Guaranty Trust Company of New York has three:

1. AUC Holdings, Ltd.
   Melbourne, Australia
2. Banco Inter-Atlantico de Investimento, S.A.
   Rio de Janeiro, Brazil
3. Banco Morgan Finansa
   Santiago, Chile

Defendants below were:

1. City of Houston
2. Houston Independent School District
3. Tax Assessor-Collector of Houston Independent School District
4. The Board of Equalization of the City of Houston of the Houston Independent School District

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To the Honorable, the Chief Justice and Associate Justices of the Supreme Court of the United States:

Morgan Guaranty International Bank and Morgan Guaranty Trust Company of New York, petitioners herein, pray that a writ of certiorari issue to review the judgment of the Court of Appeals for the First Supreme Judicial District at Houston, Texas.

OPINIONS BELOW

The opinion of the Texas Court of Appeals is reported in 666 S.W.2d 524, and is printed in Appendix A hereof at page 1a. An application for writ of error was made to the Supreme Court of Texas. That court denied the

application without written opinion, with a notation which stated that the writ was denied "no reversible error."

A copy of the judgment of the State district court in Houston, dated December 29, 1982 is Appendix B; and a copy of the judgment of the Court of Appeals is Appendix C.

JURISDICTION

The judgment of the Supreme Court of Texas, denying the application was denied on July 11, 1984. A timely motion for rehearing was denied on September 19, 1984. The jurisdiction of the Supreme Court is invoked under Article 28 U.S.C., Section 2101, and Rule 17 et seq. of this Court.

STATUTES INVOLVED

The main statute involved is 12 U.S.C. § 627. It reads:

> Any corporation organized under the provisions of sections 611-631 of this title shall be subject to tax by the State within which its home office is located in the same manner and to the same extent as other corporations organized under the laws of that State which are transacting a similar character of business. The shares of stock in such corporation shall also be subject to tax as the personal property of the owners or holders thereof in the same manner and to the same extent as the shares of stock in similar State corporations.

STATEMENT OF THE CASE

Morgan Guaranty International Bank ("MGIB") and Morgan Guaranty Trust Company of New York ("MGT") brought this suit in the State district court in Houston to challenge the validity of taxes by the City of Houston and the Houston Independent School District levied on the shares of stock in MGIB for the year 1981.

MGIB is chartered under Section 25 of the Federal Reserve Act, 12 U.S.C. §§ 611-631, enacted in 1919. It is

commonly called the Edge Act in honor of Senator Walter E. Edge of New Jersey who sponsored the legislation.

All of the shares of MGIB are owned by MGT.

Under the Edge Act, the location of the home office of the international bank, and the residence or situs of the shareholders is critical to the question of the taxation of the shares of the international bank.

The home office of MGIB is in Miami, Florida; and all of the stock is owned by MGT which is in New York. Therefore, none of the stock which has been taxed by the State of Texas is owned by any Texas person or corporation, and the home office is located in Florida. There is a branch of MGIB in Houston. The question is whether the Congress authorized the taxation of the shares of an Edge Act international bank by a state in which such bank has a branch, or whether the Congress authorized taxation only in the home office of the bank, or where its shareholders resided.

The State district court in Houston rendered a summary judgment against the State taxing authorities (Appendix B). The Houston Court of Appeals, First District, reversed. It rendered a judgment against MGIB and MGT (Appendix C). The Texas Supreme Court refused to grant a writ of error to review the case, and overruled a motion for rehearing.

The federal and Constitutional questions were raised in the trial court and were part of the basis for its judgment. They were also raised in the Texas Supreme Court.

It is the position of your Petitioners that MGIB is a federally chartered entity; and that under the doctrine of *M'Culloch v. Maryland*, 4 Wheat 316 (1819), a State may not tax it unless the Congress authorizes the tax. Congress, it is submitted, has not authorized the tax. It was not the intention of Congress to authorize a tax by a State except at the home office of the international bank, or in the state of the residence of a shareholder.

International banks (Edge Act banks) were created by the Congress in response to the post-World War I economic crisis in Europe. The United States loaned approximately ten billion dollars to European governments to support the war effort and reconstruction.

Edge Act corporations were created to alleviate the heavy burden on the federal treasury, to provide a private banking mechanism to support European currency, and to contribute to creating a favorable balance of trade.

These international banks continue to carry out international banking as it relates to imports and exports and other international transactions.

They are international banks—not "national banks" as defined by statute. They may accept only those deposits which are received as an incident to international and foreign transactions. Unlike "national banks," they do not open or maintain ordinary savings or checking accounts, or issue credit cards. They are, it is submitted, unique federally chartered instrumentalities which are not taxed as "national banks" (or State banks); and they may not be taxed by the states unless such taxation is specifically authorized by Congress.

MGIB was established in 1980. Prior to that year, MGT had another Edge Act subsidiary, Morgan Guaranty International Bank Houston, which had its home office in Houston. From its establishment in 1974 until its dissolution in 1980, Morgan Guaranty International Bank Houston paid an ad valorem tax on its shares to the City of Houston and the Houston Independent School District ("HISD") on behalf of its sole shareholder, MGT. The independent corporate existence (and thus the tax liabilities of Morgan Guaranty International Bank Houston) ended with its dissolution in 1980. This case arises from the efforts of the City of Houston and the HISD to impose a similar tax on the shares of MGIB.

The City and HISD assessed taxes in the amount of $191,892 on shares of MGIB for the 1981 tax year. MGIB later filed suit challenging these taxes under both federal and state law on the following grounds:

> 1. The federal statute which makes specific provision for, and places specific limitations on, state taxation of Edge Act corporations authorizes taxation of Edge Act corporations *only* by the state in which the home office of the company is located—in this case Florida.
>
> 2. MGIB's shares are exempt from taxation under the provisions of the Texas Property Tax Code which state that the only shares of capital stock of banking corporations which are subject to tax by Texas taxing authorities are shares of state chartered banks and shares of "national banks . . . located in" Texas. MGIB is not a state chartered bank nor is it a national bank located in Texas within the meaning of the Texas Property Tax Code.

The State court has decided the second question against your Petitioners, and it will not be argued here.

REASONS FOR GRANTING THE WRIT

I. The Texas Court of Appeals reasoning construes the applicable federal statute in a manner at odds with customary, common sense principles of statutory construction.

In enacting the Edge Act, Congress made specific provision for, and placed specific limitations upon, state taxation of corporations organized under the Act. 12 U.S.C. § 627 governs state taxation of Edge corporations and provides as follows:

> Any corporation organized under the provisions of sections 611-631 of this title shall be subject to tax by the State within which its home office is located in the same manner and to the same extent as other corporations organized under the laws of that State which are transacting a similar character of business. The shares of stock in such corporation shall

> also be subject to tax as the personal property of the owners or holders thereof in the same manner and to the same extent as the shares of stock in similar State corporations.

In analyzing this statutory provision, the Texas Court of Appeals reasoned that although the statute expressly authorized only the home state to tax an Edge Act corporation, this was not intended to preclude other states from taxing such corporations.

> While the language selected expressly permits the domiciliary state to tax the corporation and to include shares of the corporation in the valuation of the personal property of the owner for taxing purposes, nothing in either sentence of § 627 restricts or forbids taxation by any other state. (666 S.W.2d 524, 529-530, Appendix A at 7a.)

The Texas Court of Appeals apparently reasoned that although Congress in writing Section 627 expressly provided *only* that an Edge Act corporation "shall be subject to tax by the state within which its home office is located," that since Congress did not *expressly* state in so many words that states other than the home office state could not tax Edge Act corporations, it did not intend to prohibit them from doing so. Petitioners respectfully suggest that such reasoning is seriously flawed.

It is simply unreasonable to conclude that Congress in writing a statute which expressly grants the home office state authority to tax did not intend to withhold such authority from other states. Under the reasoning of the Court of Appeals, Section 627 would be understood to mean that *any* state could tax *any* Edge Act corporation, even one which has no office or operations in that state, since the language of Section 627 does not state explicitly that they may not. If Congress had intended for states other than the home office state to be able to tax Edge Act corporations it could easily have said so. It did not. When Congress affirmatively authorizes the home states to tax and is silent with respect to the power of

any other states to tax Edge Act corporations, the logical conclusion is that Congress intended to withhold such authorization from such states.

This interpretation of Congressional intent is supported by the general rule of statutory construction "expressio unius est exclusivo alterius"—which may be paraphrased to say that the expression of one thing implies the exclusion of another thing. To put it clearly, Congress has written a statute which authorizes State A (that is the home office state) to tax MGIB. State B now seeks to tax this entity as well. The Court of Appeals has ruled that since the statute says *only* State A may tax, rather than saying State B may not tax, Congress did not intend to preclude taxation by State B. This holding is at odds with the language and legislative history of Section 627 and should be reversed.

II. The language and legislative history of Section 627 indicate that Congress did not intend to authorize a state such as Texas to impose a tax on shares of an Edge Act corporation when neither the home office of the corporation nor the shareholders are found in Texas.

In the more than sixty years which have passed since the enactment of Section 627, apparently there has been only one reported decision analyzing the parameters of state power to tax Edge Act corporations pursuant to this action.

In *Commonwealth v. First Pennsylvania Overseas Finance Corporation*, 425 Pa. 143, 229 A.2d 896 (1967), the Supreme Court of Pennsylvania considered an Edge Act corporation's challenge to the assessment of Pennsylvania's capital stock tax on its shares. The First Pennsylvania Overseas Finance Corporation, an Edge Act corporation, was a wholly-owned subsidiary of the Pennsylvania corporation and had its home office in Philadelphia. First Pennsylvania nevertheless chal-

lenged Pennsylvania's assessment of the capital stock tax on its shares on the ground that it was not a "domestic" corporation within the meaning of the relevant Pennsylvania tax statute which provided that the capital stock tax was to be imposed only on domestic corporations. Although the court's decision in the case rested upon the definition of a domestic corporation within the meaning of the Pennsylvania statute, the court observed that Pennsylvania's imposition of the capital stock tax on First Pennsylvania's shares would not conflict with the provisions of Section 627 and construed the first sentence of this section to permit "a state in which the home office of the corporation is located to tax the corporation as it would a corporation organized under its own laws." 229 A.2d at 898.

The Pennsylvania court's examination of Section 627 focused upon the first sentence of the paragraph which is simple and unambiguous. This sentence grants states the power to tax those Edge Act institutions having their home offices within a particular state. Since MGIB's home office is in Florida, this first sentence of Section 627 in no way authorizes Texas to assess a tax on MGIB's shares.

If Section 627 is to be construed as permitting Texas to tax MGIB's shares, the authorization for such taxation must be derived from the second sentence of this section. Further, the legality of the taxing authorities' efforts to impose taxes on shares of MGIB stock is most appropriately determined by reference to this sentence because it is the second sentence of Section 627 which expressly addresses taxation of shares of stock in Edge Act corporations. In the absence of any case construing this second sentence of Section 627, the meaning and intent of this provision can only be discerned by careful reading of the language of the sentence and a review of the legislative history of this provision.

Along with the rest of the Edge Act, Section 627 was added to the Federal Reserve Act in 1919; the statutory language now appearing in the United States Code was a compromise drafted by a joint conference committee of the House and Senate after the two houses of Congress adopted different provisions concerning state taxation of Edge Act banks. A review of the debates in both houses on the issue of state taxation of Edge entities provides an insight into the alternative tax measures considered by Congress. By placing the compromise language of Section 627 in the context of such alternatives, we can more accurately discern the congressional intent behind this provision.

The issue of state taxation of Edge Act corporations first arose during Senate floor debate on the Edge Act. The first proposal concerning taxation of Edge Act corporations was introduced in the Senate on September 6, 1919, by Senator Gronna of North Dakota. Senator Gronna's original amendment read as follows:

> Every banking corporation organized to do foreign banking business under the provisions of this section shall, for the purpose of taxation make reports to the Federal Reserve Board and the Commissioner of Internal Revenue at such times and in such form as they may require, including a true report of the names of the actual stockholders of such corporations and the amount of stock held by each, and all such corporations organized and transacting business under the provisions of this section shall be taxed and shall pay, in accordance with the laws of the United States imposing taxes and penalties on banking corporations, into the Treasury of the United States taxes at the same rate and in like manner as is paid by other banking corporations transacting business in the United States and required to pay taxes.

58 Cong. Rec. 4968-69 (1919).

Although introduced in response to questions concerning *state* taxation of Edge Act corporations, Senator

Gronna's original proposal expressly referred only to payment of federal taxes. Senator Gronna thereafter agreed to revise his amendment by adding, after the phrase "in accordance with the laws of the United States," the phrase "and in accordance with the laws of the State in which such banking institutions may be located." The clerk in charge of transcribing Senator Gronna's amendment apparently confused Senator Gronna's proposal with another which provided that Edge Act corporations shall be taxed in the same manner as member banks of the Federal Reserve System. In view of the confused tenor of that day's debate, Senator Gronna then withdrew his proposal.

Several days later, Senator Gronna introduced an amendment providing that Edge Act corporations "shall be taxed the same as a member bank of the Federal Reserve System." The Senate approved this amendment. The Senate action left the tax status of Edge Act corporations very unclear because the Federal Reserve Act contained no reference to taxation of member banks. The only provision in the Federal Reserve Act relating to taxation of banks was a provision *exempting the Federal Reserve banks* (and their shares) from federal, state and local taxation, except real estate taxes. Member banks were not taxed in any special manner simply by virtue of their status as members of the Federal Reserve System.

After Senate Bill No. 2472, as amended by Senator Gronna's tax provision, was read on the House floor on November 1, 1919, a House Committee recommended that the Senate's tax provision be stricken in its entirety and replaced by the following paragraph:

> Any corporation organized under the provisions of this section shall be subject to tax by the State within which its home office is located in the same manner and to the same extent as other corporations organized under the laws of that State which are trans-

> acting a similar character of business. The shares of stock in such corporation shall also be subject to tax as the personal property of the owners or holders thereof in the same manner and to the same extent as the shares of stock in similar State corporations:
>
> *Provided, however,* That such shares owned by non-residents of any State shall be taxed only in the city or town in which the corporation's home office is located, and not elsewhere.

58 Cong. Rec. 7854 (1919).

The floor debate concerning the meaning and effect of this paragraph focused on the proviso at the end of the paragraph which was designed to permit only the state in which the Edge Act entity was headquartered to tax the corporation's shares and to exempt persons owning shares in Edge Act corporations and residing in states other than the state in which the Edge Act corporation had its home office from taxes levied on their shares by the state of their residence. As debate proceeded on the House measure, disagreement concerning this proviso became apparent. Representative Connally of Texas proposed that the committee amendment be altered to provide that shares of stock in an Edge Act corporation could be taxed by states in which the shareholders of such corporation resided as well as by the state in which the bank was located. Although Representative Connally's proposal prompted substantial debate concerning the question of whether an Edge Act corporation's home office state should be able to tax shares owned by non-residents to the exclusion of the states in which such shareholders resided, the Connally amendment was rejected by the House and the House thereafter voted to adopt the committee amendment exactly as set forth above.

Because of the different taxing provisions, as well as other discrepancies between the bills passed by the House and Senate, Senate Bill No. 2472 was referred to a joint conference committee. The conference committee recom-

mended in its report that the proviso at the end of the House's version of the tax paragraph be stricken. The committee's explanation of the reasons for the deletion was quite brief; the committee stated only that this deletion "has reference to the taxation of shares owned by nonresidents." Following the conference committee's report, both the House and Senate approved the measure in the form proposed by the committee.

This review of the legislative history of Section 627 indicates that the parameters of the debate on the state tax issue were defined by two possible ways of dealing with state taxation of bank shares. Congress explicitly debated the question whether shares of stock in an Edge Act entity should be subject to taxation by the state of the shareholder's residence as well as by the state in which the home office of the corporation was located. For the purposes of this case, however, it is important to note not only what Congress did debate but also what was not discussed.

Nothing in the Congressional debates indicates that Congress intended that any state other than the state in which the home office of the Edge Act entity was located and the states in which the shareholders of the Edge Act corporation reside should be able to impose taxes on the shares of Edge Act corporations.

It should be noted, of course, that at the time Section 627 was enacted, Edge Act corporations were not authorized to operate branch offices. In 1978, however, when Congress amended the Edge Act and opened the door for the Federal Reserve Board to permit Edge Act corporations to establish branch offices, Congress made no change in the language of Section 627. The Texas Court of Appeals construed the fact that Congress was silent on the question of which states are authorized to tax Edge Act corporations, when it enacted the amendment which resulted in permitting Edge Act corporations to operate branch offices, as reaffirming "the plain meaning ex-

pressed in Section 627 of the original act, the provision authorizing state taxation." Appendix A at 8a. The Court of Appeals reasoned that since Congress did not act affirmatively to include any provision in the amendments "to grant tax immunity to Edge Act banking corporations in those states where they might thereafter conduct branch banking operations, it could have done so." Appendix A at 8a.

Petitioners respectfully suggest that the issue to be considered is not whether Congress *granted* tax immunity in 1978, but whether Congress granted to states in the 1978 legislation the authority to tax shares of Edge Act companies having branch offices within their borders.

If, as Petitioners argue above, the 1919 legislation did not authorize taxation of Edge Act shares by any state other than the state in which the home office of the company was located and/or the state of the shareholders residence, then no affirmative grant of tax immunity was required in order to exempt the Edge Act corporations from taxation by the states in which the branch offices were located. One does not need immunity from unlawful taxation.

The language and the legislative history of Section 627 remain unaltered by the 1978 law. Thus until and unless Congress specifically provides in the Edge Act for taxation of an Edge Act corporation's shares by states in which branch offices are located, such states have no power to impose taxes on such shares. It is not the province of a state court to judicially affect an amendment of a statute because it feels that Congress did not complete a task. The Court of Appeals opinion assumes that Section 627 should be construed to permit Texas to tax the shares of an Edge Act corporation having a branch office in Texas because that, in the view of the Court of Appeals, is the most equitable result. Petitioners respectfully submit that the Texas court should not have substituted its general notions of fairness for the language of Congress.

Furthermore, it is questionable whether the result achieved by the Texas Court of Appeals is in fact more equitable than the result effected by the judgment of the trial court. The tax at issue here is on *all* of the capital stock of MGIB; these shares represent the capital investment and value of the entire operations of MGIB. This tax does not therefore represent a tax on, or have any relationship to, the amount of revenues or income or any other measure of the activity of the Houston branch office. Because the shares represent the value of the bank as a whole, it is not unreasonable to restrict the taxation of such shares to the home office state. To allow additional taxation of the value of all the shares by each state in which the bank had branch offices would result in inequitable multiple taxation.

The court in Texas, in this case, has decided that its tax laws do apply to Edge Act international banks. There is a substantial federal question as to whether the Texas statutes conflict with the federal statutes, and the federal Constitution, in the taxation of federal Edge Act international banks. There are other Edge Act banks in Texas and other states; and this holding and decision is of importance to them.

CONCLUSION

For the foregoing reasons, this petition for a writ of certiorari should be granted.

Respectfully submitted,

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APPENDICES

APPENDIX A

COURT OF APPEALS OF TEXAS
HOUSTON (1ST DIST.)

No. 01-83-0078-CV

CITY OF HOUSTON, HOUSTON INDEPENDENT SCHOOL DISTRICT, and WILLIAM R. BROWN, JR.,
Appellants,

v.

MORGAN GUARANTY INTERNATIONAL BANK and MORGAN GUARANTY TRUST COMPANY OF NEW YORK,
Appellees.

Dec. 29, 1983

Rehearing Denied Jan. 19, 1984

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666 S.W.2d 524

Larry F. York, Baker & Botts, Houston, for appellees.

James B. Cameron-Stuart, Sr. Asst. City Atty., Joan C. Ward, Asst. City Atty., Houston, for appellants.

Before EVANS, C.J., and DUGGAN and BASS, JJ.

OPINION

DUGGAN, Justice.

This is an appeal from a summary judgment enjoining the collection of city and school district ad valorem taxes

on shares of a federally-chartered Edge Act corporation. Although the corporation maintains a branch office at the tax situs, its shares are wholly owned by a non-resident foreign corporation which maintains its home office in Florida.

Appellees, Morgan Guaranty International Bank ("MGIB") and Morgan Guaranty Trust Company of New York ("MGT"), filed suit against appellants, the City of Houston ("City"), the Houston Independent School District ("HISD"), their tax assessor-collector and their board of equalization, to enjoin collection of ad valorem taxes on shares of MGIB's stock for the tax year 1981. The appellees pleaded that MGIB's shares are not properly taxable because, under state and federal law, they have no "tax situs" in Texas. The appellants generally denied appellees' assertions and counterclaimed for delinquent ad valorem taxes in the amount of $191,892, together with penalties, interest, attorneys' fees, and costs as authorized by statute. Following a hearing on the parties' cross-motions for summary judgment, the trial court (1) denied appellants' motion urging that delinquent City and HISD taxes on MGIB shares were due and owing by MGT as a matter of law, and (2) granted appellees' motion permanently enjoining the appellants from attempting to collect 1981 taxes assessed on stock shares issued by MGIB and wholly owned by MGT. Eight points of error are asserted. We reverse and render.

In 1974, pursuant to Section 25(a) of the Federal Reserve Act, 12 U.S.C. §§ 611-631 (1976), commonly known as the Edge Act, Morgan Guaranty International Bank of Houston ("MGIBH") commenced operation in Houston. The Edge Act authorizes the establishment of federally chartered corporations "for the purpose of engaging in international or foreign banking or other international or foreign financial operations." 12 U.S.C. § 611. From its inception through the tax year 1980, MGIBH paid the

ad valorem tax on bank shares to the appellants on behalf of its sole stockholder, MGT.

In 1978, Section 25(a) of the Federal Reserve Act was amended for the first time since the section's enactment in 1919, in order to make Edge Act corporations more competitive with foreign-owned banking institutions. International Banking Act of 1978, § 3(a), 12 U.S.C.A. § 611a note (West. Supp. 1983); S.Rep. No. 1073, 95th Cong.2d Sess., *reprinted in* 1978 U.S.Code Cong. & Ad. News 1423-24. By authority of the amending act, the Federal Reserve Board then issued regulations permitting banking organizations established pursuant to Section 25(a) of the Federal Reserve Act to operate branch banks in the United States. 12 C.F.R. § 211.4(c) (1983).

Consequently, in 1980, all of the assets and liabilities of MGIBH were transferred to MGIB, and MGIBH's banking operations in Houston were converted to a branch operation of MGIB. MGIB also operates branch offices in Los Angeles and San Francisco. It has designated Miami, Florida, as its home office of corporate headquarters, and all of its capital stock is owned by MGT of New York.

Appellees MGIB and MGT did not challenge the valuation method or the apportionment formula used to assess the tax for the year 1981 on the bank shares issued by MGIB. They insisted, instead, that neither existing federal nor state statutes permit Texas to tax shares of MGIB's stock.

By their first point of error, the appellants contend that the trial court erred in permanently enjoining them from attempting to collect the 1981 taxes assessed on bank shares issued by appellee MGIB, in that the Edge Act, as originally enacted and as amended, *does* permit state taxation of the MGIB bank shareholders. The relevant portion of that act, not amended in the 1978 revisions, provides as follows:

§ 627. State taxation

> Any corporation organized under the provisions of sections 611-631 of this title shall be subject to tax by the State within which its home office is located in the same manner and to the same extent as other corporations organized under the laws of that State which are transacting a similar character of business. The shares of stock in such corporation shall also be subject to tax as the personal property of the owners or holders thereof in the same manner and to the same extent as the shares of stock in similar State corporations.

12 U.S.C. § 627.

Both parties call this court's attention to one of only two published opinions which discuss a state's power to tax Edge Act banks since § 627's adoption in 1919. In *Commonwealth of Pennsylvania v. First Pennsylvania Overseas Finance Corporation*, 425 Pa. 143, 229 A.2d 896 (1967), the Supreme Court of Pennsylvania observed that § 627 permitted Pennsylvania to subject the Edge Act corporation there involved to that state's capital stock tax since it "permits a state in which the home office of the corporation is located to tax the corporation as it would a corporation organized under its own laws." The corporation there was a wholly-owned subsidiary of a Pennsylvania corporation and had its home office in Philadelphia. The court's decision rested upon the definition of a domestic corporation within the meaning of the Pennsylvania taxing statute. The question here on appeal did not arise in that case, and could not have arisen before the act's 1978 amendment to permit interstate branch banking operations within the United States by Edge corporations. The state in which the home office of an Edge corporation was located at that time was also the only state in which the bank was doing business.

The United States Supreme Court mentioned § 627 in a footnote of an opinion as one of several statutes passed by Congress to protect federally chartered financial in-

stitutions from unequal and unfriendly competition caused by state tax laws favoring state-chartered institutions. *First Federal Savings & Loan Ass'n of Boston v. State Tax Commission*, 437 U.S. 255, 258, 98 S.Ct. 2333, 2335, 57 L.Ed.2d 187 (1978).

Both parties offer excerpts in their briefs from the 1919 Congressional Record to suggest the proper interpretation of § 627. Appellants quote portions of the Senate and House debates showing a distinct intention by Congress that financial entities organized under the Edge Act be subject to the same local taxes as other corporations in a state in which they are doing business. The appellees summarize part of the debate leading to the joint conference committee's proposal, which was ultimately adopted. This debate centered on whether shares of stock in Edge Act entities should be subject to taxation by the state of the shareholder's residence as well as by the state in which the home office of the corporation is located. Appellees conclude that

> nothing in the Congressional debates *summarized above* suggests that Congress intended that any states other than the state in which the home office of the Edge Act entity was located and the states in which the shareholders of the Edge Act corporation reside should be able to impose taxes on the shares of Edge Act corporations.

(Emphasis added).

Appellees further observe that when § 627 was enacted, Edge Act corporations were not authorized to operate branch offices. Since Congress made no change in the language of § 627 in 1978 when other sections of the Act were amended to permit branch offices, appellees conclude that Congress must have "overlooked the question" or "thought that the establishment of branch offices [in 1978] should in no way alter the tax policy established [in 1919] by § 627, which makes no provision for taxation of an Edge corporation by a state in which a branch

office is located." As a result; appellees insist that the limitations on state taxation expressed in § 627 preempt any contrary provisions contained in state tax statutes.

The resolution of an issue of federal statutory construction begins with an analysis of the language of the statute itself, and absent a clearly expressed legislative intention to the contrary, the plain language of the statute controls its construction. *Allen v. Pierce*, 689 F.2d 593, 596 (5th Cir.1982). In every case involving the interpretation of a federal statute, the analysis must begin with the language employed by Congress. *Howe v. Smith*, 452 U.S. 473, 480, 101 S.Ct. 2468, 2473, 69 L.Ed.2d 171 (1981).

Principles of statutory construction used by Texas courts are the same. The dominant consideration in construing a statute is the legislative intent. *Minton v. Frank*, 545 S.W.2d 442, 445 (Tex.1976); *Calvert v. British-American Oil Producing Co.*, 397 S.W.2d 839, 842 (Tex.1965). Where the intent is apparent from the words of the statute, it is not necessary to analyze the extrinsic evidence of legislative intent. *Minton, supra*, at 445; *Calvert, supra*, at 842. The intention of the legislature should be ascertained from the entire act and not from isolated portions thereof. *Calvert*, at 842. The recently enacted Code Construction Act, Tex.Rev.Civ.Stat. Ann. art. 5429b-2 (Vernon Supp.1983), provides, however, that a statute need not be ambiguous before consideration can be given to its objectives, legislative history, and surrounding circumstances, or to the common law or former law upon the same or similar subjects, the consequences of a particular construction, and other factors. § 3.03.

The first sentence of § 627 states:

> Any corporation organized under the provisions of sections 611-631 of this title shall be subject to tax by the State within which its home office is located in the same manner and to the same extent as other

> corporations organized under the laws of that State which are transacting a similar character of business.

We are not concerned with a tax levied upon MGIB as a corporation, nor is Texas the location of its home office. The meaning of this first sentence is therefore relevant here only in its relation to the second sentence, which provides:

> The shares of stock in such corporation shall also be subject to tax as the personal property of the owners or holders thereof in the same manner and to the same extent as the shares of stock in similar State corporations.

Taken in its entirety, the provision authorizes state taxation of both the Edge corporation itself and its shares as the personal property of the owners or holders. It speaks of no tax immunity or special tax exemption for either the corporation or its shareholders as a consequence of incorporation under the Act. While the language selected expressly permits the domiciliary state to tax the corporation and to include shares of the corporation in the valuation of the personal property of the owner for taxing purposes, nothing in either sentence of § 627 restricts or forbids taxation by any other state. The provision does make clear that a taxing state must treat Edge Act banks the same as it treats its own state banks.

Section 3 of the International Banking Act of 1978, which amended the Edge Act, removed certain provisions that discriminated against foreign banks, eliminated or modified provisions that had handicapped Edge Act corporations in providing international banking services to United States customers and in competing with foreign-owned banking institutions, and defined more clearly the national purposes behind Edge Act corporations. 12 U.S.C.A. § 611a note (West. Supp. 1983); S.Rep. No. 1,073, 95th Cong., 2d Sess., *reprinted in* U.S. Code Cong. & Ad.News 1424. A consequence of this amendment is the branch banking operation in which MGIB is now engaged.

However, nothing in the amending statute suggests any legislative intent to alter the plain meaning expressed in § 627 of the original act, the provision authorizing state taxation. Had Congress wished, as a part of its 1978 amendments, to grant tax immunity to Edge Act banking corporations in those states where they might thereafter conduct branch banking operations, it could have done so. Like national banks, Edge Act banks were subject to state taxation before 1978 in those states where they were conducting banking operations, i.e., their home states. Appellee MGIB admits that its predecessor, MGIBH, paid the ad valorem tax on its bank shares through 1980. That MGIB's home office is located in another state is not dispositive of the question.

> As a general rule, where the legislation dealing with a particular subject consists of a system of related general provisions indicative of a settled policy, new enactments of a fragmentary nature on that subject are to be taken as intended to fit into the existing system and to be carried into effect conformably to it, excepting as a different purpose is plainly shown.

Hurwitz v. United States, 208 F. Supp. 594, 596 (S.D. Tex. 1962), *affirmed* 320 F.2d 911 (5th Cir. 1963), *cert. denied* 376 U.S. 936, 84 S.Ct. 791, 11 L.Ed.2d 658 (1964) (quoting *United States v. Jefferson Electric Co.*, 291 U.S. 386, 54 S.Ct. 443, 78 L.Ed. 859 (1934) (both regarding amendment of the Internal Revenue Code).

Neither should we presume that Congress "overlooked" the branch bank taxation question. It is not a function of the United States Supreme Court to presume that Congress, in enacting legislation, was unaware of what it accomplished. *Albernaz v. United States*, 450 U.S. 333, 342, 101 S.Ct. 1137, 1144, 67 L.Ed.2d 275 (1981). Neither is it ours.

We hold that the Edge Act, as amended, does not prohibit the State of Texas from assessing ad valorem taxes on shares of stock owned by non-resident shareholders of

an Edge Act bank doing business in Texas. This view of congressional intent is buttressed by review of the act's legislative history and Congress' longstanding practice of permitting federally chartered banks to be taxed by states where they are located. Appellants' first point of error is sustained.

Appellants urge, as their second and third points of error, that the trial court erred in enjoining collection of the 1981 taxes assessed on Edge Act bank shares to the extent that it relied upon either the Commerce Clause or the Due Process Clause of the Fourteenth Amendment of the United States Constitution as a prohibition.

These federal constitutional issues were not raised in pleadings or motions for summary judgment by any party. Further, appellees affirmatively state in their brief that they

> did not challenge the validity of the application of the Texas bank shares tax to [appellee] MGIB shares on due process or commerce clause grounds in the court below . . . .
>
> The question whether Texas, consistent with the Commerce and Due Process clauses of the Constitution, might adopt a statute taxing shares of Edge Act corporations having branch offices in Texas on an apportioned basis, which is the issue addressed in Points of Error Nos. Two and Three, is simply not before this court.

Based upon both the status of pleadings and appellee's renunciation of reliance upon federal commerce and due process clauses as grounds for relief, we decline to consider appellant's points of error two and three on the ground that they are not germane to the appeal.

Appellants contend by their fourth and fifth points of error that the court erred in granting the injunction because the ad valorem tax levied for 1981 on MGIB's bank shares is authorized by art. 7166 of the revised civil

statutes, Act of March 31, 1885, ch. 111, § 2a, 1885 Tex. Gen.Laws 106, 9 H. Gammel, Laws of Texas 726 (1898), *repealed by* Act of June 13, 1979, ch. 841, sec. 6(a)(1), 1979 Tex.Gen.Laws 2329, and by § 11.02 of the new tax code, Tex.Tax Code Ann. (Vernon 1982). Both of these statutes were in effect in 1981. Article 7166 was repealed as of January 1, 1982. Act of June 13, 1979, ch. 841, section 3(j), 1979 Tex.Gen.Laws 2315. Although most of the tax code became effective January 1, 1982, Chapter 11, including § 11.02, took effect January 1, 1980. *Id.*, sec. 3(f).

The pertinent portions of art. 7166 are as follows:

> Every banking corporation, State or national, doing business in this State shall, in the city or town in which it is located, render its real estate to the tax assessor at the time and in the manner required of individuals. . . . Every shareholder of said bank shall, in the city or town where said bank is located, render at their actual value to the tax assessor all shares owned by him in such bank. . . .

Section 11.02 of the Texas Property Tax Code reads:

> § 11.02 Intangible Personal Property
>
> (a) Except as provided by Subsection (b) of this section, intangible personal property is not taxable.
>
> (b) Stock in a banking corporation, intangible property of an unincorporated bank, intangible property of a transportation business listed in Subchapter A, Chapter 24 of this code, and intangible property governed by Article 4.01, Insurance Code, or by Section 11.09, Texas Savings and Loan Act, are taxable as provided by law, unless exempt by law, if this state has jurisdiction to tax those intangibles.
>
> (c) This state has jurisdiction to tax intangible personal property, other than stock in a banking corporation, if the property is:

(1) owned by a resident of this state; or

(2) located in this state for business purposes.

(d) This state has jurisdiction to tax stock in a banking corporation that is incorporated in this state or, if the bank is a national bank, is located in this state.

The Code Construction Act, Tex.Rev.Civ.Stat.Ann. art. 5429b-2, § 3.05(a) (Vernon Supp.1983) provides that in the case of any conflict between statutory provisions, the statute latest in date of enactment prevails. Because § 11.02 of the tax code is determinative as to whether the bank shares have a tax situs in Texas under state law, we decline to consider appellants' fourth point of error, which urges the applicability of art. 7166.

The appellees claimed in the summary judgment hearing that they were immune from taxation under § 11.02 because MGIB (1) is not a banking corporation, (2) is not a state or national bank, and (3) is not located in this state. We reject each of these contentions.

Appellees argument that it is not a banking corporation is refuted by its admission, in its first amended original petition, that MGIB is a "duly organized and existing Edge Act banking corporation."

Appellees' claim that MGIB is not "located in" this state requires a determination of legislative intent as to the meaning of the quoted phrase. The appellees argue that decisions by several Texas courts suggest that the term "located in" refers only to the legal domicile of a corporation, which would be Miami, Florida, in this case.

Section 2.01 of the Code Construction Act states:

Words and phrases shall be read in context and construed according to the rules of grammar and common usage. Words and phrases that have acquired a technical or particular meaning, whether

> by legislative definition or otherwise, shall be construed accordingly.

Section 3.03 permits consideration of a number of "construction aids" in construing a statute, including the object sought to be attained, the common law or former statutory provisions, the consequences of a particular construction, and the administrative construction of the statute. Section 3.01 permits this court to presume that the legislature, in enacting a statute, intended a just and reasonable result and favors a public interest over any private interest.

With these criteria in mind, we turn to § 11.02(d), which states:

> This state has jurisdiction to tax stock in a banking corporation that is incorporated in this state or, if the bank is a national bank, is located in this state.

The sentence indicates alternative circumstances under which the state has the right to tax bank shares: where the bank is one *incorporated* in this state and where the bank is *located* in this state. The issue then is whether "located in" means the same as "legally domiciled in" or "doing business in" or both. If the phrase refers only to legal domicile, then § 1102(d) extends Texas' jurisdiction to tax bank shares of nondomestic banks only to shares of banks that have their home office or principal place of business in Texas. The statute would not authorize, therefore, the assessing of the ad valorem tax on shares of MGIB or any other branch bank having its home office outside the state.

Common usage suggests that "located" means settled, situated, established, found, discovered, or stationed. *Black's Law Dictionary* 847 (5th ed. 1979), *Webster's New Collegiate Dictionary* 669 (1981).

The appellants point to § 11.02(c)(2) of the statute, wherein the state is given jurisdiction to tax intangible

personal property, other than stock in a banking corporation, if the property is "owned by a resident of this state" or "located in this state for business purposes." This language suggests that by "located in" the Legislature means "doing business in."

The language of Article 7166, the predecessor statute, clearly stated that every bank "doing business in this State" and the shareholders of "said bank" should be taxed "in the city or town where said bank is located."

Appellees observe that Texas courts have generally equated a corporation's residence or domicile with the location of its principal place of business, and they cite a case in which the term "located" in an inheritance tax statute was held to equate with "domicile or residence." *San Jacinto National Bank v. Sheppard*, 125 S.W.2d 715 (Tex.Civ.App.—Austin 1938, no writ). Under the common law rule of *mobilia sequuntur personam* (moveables follow the person), the situs of personal property is the domicile of the owner. As stated in *State v. Crown Central Petroleum Corp.*, 242 S.W.2d 457, 461 (Tex.Civ.App. —San Antonio 1951, writ ref'd), when applied to taxation, this fiction of law

> merely means that the situs of personal property for purposes of taxation is the domicile of the owner unless
>
> (1) there is a statute to the contrary, or
>
> (2) the property is tangible and has acquired an actual situs of its own in a state or place other than where the owner is domiciled, or
>
> (3) in cases of intangible property, it has acquired a business situs in a state other than the one where the owner is domiciled.

Id. at 461. The Texas Supreme Court has observed that Texas constitutional and statutory provisions for taxing property owned by corporations make no distinction between that owned by domestic and that owned by foreign

corporations. *Greyhound Lines, Inc. v. Board of Equalization for the City of Fort Worth*, 419 S.W.2d 345, 350 (Tex.1967). In interstate relationships the domicile of a foreign corporation is the state where incorporated, but its domicile for purposes of doing business in Texas is its principal place of business in this state. *Id.*

The most pertinent of the Texas decisions examining the tax situs of intangible property is *First Trust Joint Stock Land Bank v. Dallas*, 167 S.W.2d 783 (Tex.Civ. App.—Dallas 1942, writ ref'd). In that case a federal land bank, located in Dallas but whose stock was almost wholly owned by nonresidents of Texas, refused to pay property taxes assessed against its predecessor as agent for its nonresident stockholders. In upholding the assessment, the court explained that

> shares of stock of a banking corporation, being a species of personal property, [are] taxable in the state where the place of business or domicile of the corporation is located . . . [H]aving determined the situs of the shares of stock held by non-residents to be in the state where the association is located, such shares of stock are assessable for taxation. . . .

Id. at 785. The bank was not a branch office having a principal place of business in another state, as is the case here; nevertheless, the case shows that, under the old statute, a bank was "located" wherever in Texas it was doing business or was domiciled.

We hold that the new statute means the same. The words "located in" have acquired no technical or particular meaning (except for their use in *San Jacinto, supra*) and should be given their plain meaning. Case law under the old taxing statute and that statute itself imply this meaning. The *Greyhound* case blurs any distinction between a legal domicile and a principal place of business in Texas as far as state taxation is concerned. Most important, the language of the statute itself (§ 11.02),

taken as a whole, suggests an intention to include shares of any foreign banking corporations operating in Texas.

We find (1) that the phrase "located in this state" in § 11.02 means both doing business in this state and domiciled here, and (2) that MGIB is located here because it maintains a branch office in Houston.

Appellees' third argument for tax immunity is its claim that, because it is neither a state nor a national bank, it does not come within the coverage of § 11.02(d). That provision gives the state jurisdiction to tax stock in a banking corporation that is "incorporated in this state or, if the bank is a national bank, is located in this state." Since MGIB is not a bank "incorporated in this state," we must determine whether it is a "national bank" within the meaning of § 11.02(d).

Neither the act which enacted § 11.02 nor the predecessor statute, Art. 7166, contains any definition of "national bank." The Texas Banking Code defines a national bank as "[a]ny banking corporation organized under the provisions of Title 12, United States Code, Section 21, [the National Bank Act], and the amendments thereto." Tex.Rev.Civ.Stat.Ann. art. 342-102 (Vernon Supp.1983). In the absence of a specific definition of "national bank" for purposes of § 11.02(d) of the tax code, and in light of the fact that the term "national bank" is apparently defined but once in the Texas statutes, the appellees contend that the definition contained in the banking code is the best evidence of what the Legislature intended when it employed the term in § 11.02(d). Since MGIB was not chartered under the National Bank Act, appellees insist it cannot be a "national bank" within the purview of the taxing statute.

Appellees further argue that nowhere in the federal statutes governing the establishment and operation of Edge Act entities are they referred to as "national banks." They also point to the differences in and limitations of

the corporate powers granted Edge Act entities as compared to national banks organized under the National Bank Act.

The appellants urge that the term "national bank," as used in § 11.02(d), encompasses all banks chartered by the federal as opposed to state government. They observe that many writers have referred to the dual banking system operating within the United States and insist that these categories refer to the governmental *entity* under which the bank is chartered, and not to a particular *act*. We agree. "National bank" is defined in *Black's Law Dictionary* 923 (5th ed. 1979) as

> a bank incorporated and doing business under the laws of the United States, as distinguished from a *state* bank, which derives its powers from the authority of a particular state.

Appellants' theory that the words "state" and "national" in § 11.02(d) refer to the organizing body rather than the act governing the organization is further supported by reference in § 11.02(d) to the place of incorporation.

It does not appear that the Legislature meant to be bound by the narrow definition of "national bank" stated only in the definitions section of the banking code, either within that code itself or within the entire body of Texas statutory law. Article 342-102, *supra*, which contains this definition, is preceded by the following:

> As used in this code the following terms, *unless otherwise clearly indicated by the context*, have the meanings specified below.

(Emphasis added.) Article 342-908, another statute within the banking code, provides, in part, as follows:

> State and national banks are hereby declared to be within the same class under the Constitution and laws of this state. It is not the intention of the

> Legislature to discriminate between state banks, national banks, and private banks.

Article 7166, predecessor of § 11.02, provided, in part:

> Every banking corporation, State or national, doing business in this State shall . . . render its real estate to the tax assessor. . . .

We find no reason to believe that the Legislature, in enacting these statutes, intended to penalize or favor certain banks by excluding from their scope banks chartered by the federal government under acts other than the National Bank Act, particularly in view of its declared policy of fair and equal treatment stated in Article 342-908. The law favors competition in banking. *First National Bank of Grapevine v. State Banking Board*, 419 S.W.2d 878, 880 (Tex.Civ.App.—Austin 1967, writ ref'd n.r.e.). Furthermore, if Edge Act banks are not national banks, they are operating in Texas in violation of the Texas Constitution: Article 16, § 16, states that

> no foreign corporation, other than the national banks of the United States domiciled in this State, shall be permitted to exercise banking or discounting privileges in this State.

Tex. Const. (Vernon Supp.1983).

Judicial construction of Article 7166 lends further support to the argument that Edge corporations are subject to the bank shares tax under § 1102(d). In *First Trust Joint Stock Land Bank of Chicago, supra*, the court found stock of a joint stock land bank organized under 12 U.S.C. §§ 810-824 and owned by non-residents to be assessable for taxation under Article 7166. It found, by looking at the state taxation provision of the federal act under which the bank was incorporated, 12 U.S.C. § 932, that Congress intended that state taxing authorities be empowered to assess such taxes.

In *Brenham Production Credit Ass'n v. Zeiss*, 153 Tex. 132, 264 S.W.2d 95 (1953), stock of a production credit association, organized under 12 U.S.C. § 1131d and owned by Texans who were not residents of Brenham, was not taxable under Article 7166 by the City of Brenham. The court found the association was not a banking corporation as contemplated by Article 7166.

In distinguishing *Brenham* from *Joint Stock*, the Supreme Court observed that while both organizations were created by virtue of provisions in Title 12 of the United States Code, the joint stock land bank had the historical characteristics of a bank, whereas the production credit association did not. It was also significant that the federal statute relating to state taxation of joint stock land banks provided for taxation by a state "in a manner and subject to the conditions and limitations contained in [the national bank act] . . . ." The act creating the production credit association did not.

The appellees apply the two criteria employed in *Brenham*—bank characteristics and state tax provisions in the federal act creating the entity—and conclude that Edge corporations, both in terms of their status under federal law and their functions, more closely resemble the production credit associations than the joint stock land banks. We disagree.

An Edge corporation is "engaged in banking" if it is ordinarily engaged in the business of accepting deposits in the United States from nonaffiliated persons, according to the Federal Reserve Board. 12 C.F.R. § 211.2 (1983). It may receive demand savings, and time deposits from foreign governments, persons conducting business principally at their offices or establishments abroad, individuals residing abroad and others. That its principal function is the financing of foreign transactions, international activities, imports, and exports does not preclude its being considered a bank; nor do the limitations placed upon its

depository activities. *Id. See* "Bank" in *Black's Law Dictionary* 131 (5th ed. 1979).

The language employed by Congress in 12 U.S.C. § 627, like that used in *Joint Stock, supra,* also supports inclusion of Edge banks under § 11.02(d). Shares of Edge corporation stock are to be subject to tax "in the same manner and to the same extent as the shares of stock in similar State corporations." 12 U.S.C. § 627. By prescribing the same standards of taxation for Edge banking corporations as for a state's own banks, Congress apparently intended such banks to be treated no differently from any other nationally chartered bank. As in *Joint Stock, supra,* MGIB falls within the scope of the taxing statute. *Brenham, supra,* simply reinforces this conclusion. The Supreme Court in *Brenham* was not concerned that the production credit association and the joint stock land bank had not been established under the National Bank Act. Inclusion within Article 7166 depended upon other factors.

Certainly the ad valorem tax assessed on shares of MGIB at the place where it is conducting its business operations in Texas must logically be authorized by § 11.02(d). Any other construction of that statute would be in contravention of the law and would permit shareholders of an out-of-state corporation to take advantage of the economic environment, benefits, protection, and services offered by the local community and then remove the profits to another state without paying any *quid pro quo* for the advantages obtained. It is only fair that shareholders of Edge Act corporations return a proportionate share of profits derived from doing business in this state. *Michelin Tire Corporation v. Wages,* 423 U.S. 276, 289, 96 S.Ct. 535, 542, 46 L.Ed.2d 495 (1976); *Texas Land and Cattle Company v. City of Fort Worth,* 73 S.W.2d 860, 864 (Tex.Civ.App.—Fort Worth 1934, writ ref'd). Appellant's point of error five is sustained.

Point of error six asserts error as a matter of law because the trial court failed to comply with Rule 683 of the rules of civil procedure. Point of error seven alleges there was no evidence to support the issuance of a permanent injunction.

Rule 683 provides, in pertinent part:

> Every order granting an injunction and every restraining order shall set forth the reasons for its issuance; shall be specific in terms; shall describe in reasonable detail and not by reference to the complaint or other document, the act or acts sought to be restrained. . . .

(Vernon 1967). The judgment appealed from simply states that the court, "having heard the arguments of counsel thereon, and having reviewed the motions, affidavits, and briefs," grants the motion for summary judgment, "and defendants are permanently enjoined from attempting to collect the 1981 taxes assessed on bank shares issued by Morgan Guaranty International Bank and made the subject of this action." The judgment goes on to deny the appellants' motion for summary judgment and orders each party to pay its own costs of court. The judgment does not recite any reasons for granting the injunction. Appellants were unsuccessful in their attempt to determine those reasons by the filing of a written request for findings of fact and conclusions of law.

Appellants' complaint must fail because the provision in Rule 683 requiring that reasons for issuance of an injunction be stated applies only to ancillary injunctive relief and not to final judgments whose sole object is to obtain a perpetual injunction. *Alexander Schroeder Lumber Co. v. Corona*, 288 S.W.2d 829, 835 (Tex.Civ.App.—Galveston 1956, writ ref'd n.r.e.); *Gasperson v. Madill National Bank*, 455 S.W.2d 381, 382, 398 (Tex.Civ.App.—Fort Worth 1970, writ ref'd n.r.e.); *Texas Liquor Con-*

trol Board v. Bacon, 443 S.W.2d 312, 317 (Tex.Civ.App. —Austin 1969), *rev'd on other grounds*, 456 S.W.2d 891 (Tex. 1970).

Had Rule 683 applied to the judgment herein, and had this not been a summary judgment proceeding, the court's filing of findings of fact and conclusions of law would not have cured the fatal defect. *Schulz v. Schulz*, 478 S.W.2d 239, 245 (Tex.Civ.App.—Dallas 1972, no writ). Since this was a summary judgment proceeding, findings of fact and conclusions of law are neither required nor appropriate. *State v. Easley*, 404 S.W.2d 296, 297 (Tex. 1966); *Fulton v. Duhaime*, 525 S.W.2d 62, 64 (Tex.Civ.App.— Houston [1st Dist.] 1975, writ ref'd n.r.e.). Appellants' sixth point of error is overruled.

With regard to the appellants' no evidence claim, the only evidence submitted by appellees is the affidavit of Robert S. Devens, vice president of MGIB and general manager of the Houston branch office. This document establishes that MGIB is a banking corporation organized in accordance with the Edge Act. 12 U.S.C. §§ 611-631, and that it was conducting banking business within the City of Houston and the Houston Independent School District prior to and throughout the tax year 1981. In view of the foregoing discussion under points of error one, four, and five, this affidavit does not establish that appellees have a right as a matter of law to the injunctive and declaratory relief requested in their petition. Appellants' seventh point of error is sustained.

Appellants' eighth and final point asserts error in the court's failure to grant their own motion for summary judgment since they had established a prima facie case against the appellees. A taxing authority establishes its prima facie case as to every material fact necessary to establish the cause of action when it introduces a copy of the delinquent tax record, certified by the proper taxing authority to be true and correct, with the amount stated thereon to be unpaid. *Davis v. City of Austin*, 632

S.W.2d 331, 333 (Tex. 1982); *Houston Crane Rentals, Inc. v. City of Houston*, 454 S.W.2d 216 (Tex.Civ.App.—Houston [1st Dist.] 1970, writ ref'd n.r.e.) (summary judgment case).

Attached to appellants' original answer and counterclaim is a copy of the delinquent tax statement, with the amount stated thereon to be unpaid certified to be true and correct as shown by the tax rolls by William R. Brown, Jr., Assessor and Collector of Taxes for the City of Houston and the Houston Independent School District. Attached to its motion for summary judgment is a copy of the same certified delinquent tax record, along with an affidavit by Janice M. Delry, Deputy Tax Collector for the appellant city and school district, affirming the truth and accuracy of the attached statement. Appellees have failed to rebut the evidence forming appellants' prima facie case; appellants are entitled, therefore, to prevail on their motion for summary judgment. Appellants' point of error eight is sustained.

The judgment is accordingly reversed and rendered in favor of the appellant taxing authorities. The injunction issued by the trial court prohibiting collection of 1981 taxes due under Texas Tax Code § 11.02 is hereby set aside and dissolved. It is further ordered, adjudged, and decreed that the City of Houston and the Houston Independent School District have judgment from December 29, 1982, against Morgan Guaranty International Bank and Morgan Guaranty Trust Company of New York in the amounts of $85,967.62 and $105,924.38 respectively, together with penalties, interest, costs of court, and attorney's fees, as provided by law.

APPENDIX B

IN THE DISTRICT COURT

295TH JUDICIAL DISTRICT
HARRIS COUNTY, TEXAS

No. 81-61, 204

MORGAN GUARANTY INTERNATIONAL BANK, ET AL

vs.

CITY OF HOUSTON, ET AL

FINAL JUDGMENT

BE IT REMEMBERED that on the 20th day of December, 1982, came on to be heard the motions for summary judgment of Plaintiffs and Defendants. The Court having heard the arguments of counsel thereon, and having reviewed the motions, affidavits, and briefs, it is ordered as follows:

I.

The motion for summary judgment of Plaintiffs Morgan Guaranty Trust Company and Morgan Guaranty International Bank is granted, and defendants are permanently enjoined from attempting to collect the 1981 taxes assessed on bank shares issued by Morgan Guaranty International Bank and made the subject of this action.

II.

Defendants' motion for summary judgment is denied.

III.

Costs of court incurred herein shall be paid by the party incurring them.

Entered this 29 day of December, 1982.

APPENDIX C

COPY OF JUDGMENT

No. 01-83-0078-CV

CITY OF HOUSTON, HOUSTON INDEPENDENT SCHOOL DISTRICT, AND WILLIAM R. BROWN, JR.

v.

MORGAN GUARANTY INTERNATIONAL BANK AND MORGAN GUARANTY TRUST COMPANY OF NEW YORK

Appeal from 295th District Court of Harris County, (Tr. Ct. #81-61294). Opinion delivered by Associate Justice Duggan, Chief Justice Evans and Associate Justice Bass sitting

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The cause heard today by the Court is an appeal from the judgment rendered and entered by the court below on December 29, 1982. After hearing the cause on the transcript of the record and inspecting the same, it is the opinion of this Court that there was error in the judgment. It is therefore considered, adjudged and ordered that the judgment of the court below be reversed and rendered in accordance with the opinion of this Court.

It is further ordered that the appellees, Morgan Guaranty International Bank and Morgan Guaranty Trust Company of New York, jointly and severally, pay all costs incurred by reason of this appeal.

It is further ordered that this decision be certified below for observance.

Judgment rendered by panel consisting of Justices Duggan, Evans and Bass.

FILED
JAN 22 1985
ALEXANDER L. STEVAS,
CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1984

NO. 84-967

MORGAN GUARANTY INTERNATIONAL BANK,
MORGAN GUARANTY TRUST
COMPANY OF NEW YORK,
Petitioners,

v.

CITY OF HOUSTON,
HOUSTON INDEPENDENT SCHOOL DISTRICT
AND WILLIAM R. BROWN, JR.,
Respondents.

BRIEF OPPOSING THE PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEALS FOR THE FIRST SUPREME JUDICIAL DISTRICT AT HOUSTON, TEXAS

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I

RESPONDENTS' RESTATEMENT OF THE QUESTION PRESENTED FOR REVIEW

May a state, or its subdivisions, levy an apportioned tax on the shares of an Edge Act Corporation operating a branch bank within said state, when neither the designated home office nor the shareholders reside within said state?

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1984

NO. 84-967

MORGAN GUARANTY INTERNATIONAL BANK,
MORGAN GUARANTY TRUST
COMPANY OF NEW YORK,
Petitioners,

v.

CITY OF HOUSTON,
HOUSTON INDEPENDENT SCHOOL DISTRICT
AND WILLIAM R. BROWN, JR.,
Respondents.

BRIEF OPPOSING THE PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEALS FOR THE FIRST SUPREME JUDICIAL DISTRICT AT HOUSTON, TEXAS

To the Honorable Chief Justice and Associate Justices of the Supreme Court of the United States:

The City of Houston, the Houston Independent School District and William R. Brown, Jr., Respondents herein, respectfully submit this brief in opposition to Petitioners' application for a Writ of Certiorari to review the judgment of the Court of Appeals for the First Supreme Judicial District at Houston, Texas.

STATEMENT OF THE CASE

The City of Houston (the "City"), the Houston Independent School District ("HISD") and William R. Brown, Jr., the Acting Tax Assessor and Collector for said taxing units, appealed from a judgment of the 295th District Court, Harris County, Texas, permanently enjoining said Respondents from attempting to collect the 1981 taxes assessed on bank shares issued by Morgan Guaranty International Bank. Plaintiff, Morgan Guaranty International Bank ("MGIB"), Petitioner herein, instituted this suit on December 22, 1981, against the City and School District contesting the validity of ad valorem taxes assessed on behalf of said taxing units on bank shares issued by Morgan Guaranty International Bank. In response to the Respondents' Plea in Abatement, Plaintiff's First Amended Original Petition was filed adding Morgan Guaranty Trust Company of New York ("MGT"), the owner of all issued and outstanding shares of Morgan Guaranty International Bank, as a Party Plaintiff.

In 1974, pursuant to Section 25(a) of the Federal Reserve Act, 12 U.S.C. §§ 611-631, commonly known as the Edge Act, Morgan Guaranty International Bank of Houston ("MGIBH") commenced operation in Houston, Texas. From its inception through the tax year 1980, MGIBH paid a bank shares tax to the Respondents on behalf of its sole stockholder, MGT.

In 1979, pursuant to Section 3(b) of the International Banking Act of 1978 (12 U.S.C. § 611), the Federal Reserve Board issued regulations permitting banking organizations established pursuant to Section 25(a) of the Federal Reserve Act, *supra,* to operate branch banks in the United States. On June 10, 1980, all of the assets and liabilities of MGIBH were transferred to MGIB, and

MGIBH's banking operations in Houston were converted to a branch operation of MGIB. In addition to the Houston branch office, MGIB operates branch offices in the port cities of Los Angeles and San Francisco, California. MGIB has designated Miami, Florida as its home office or corporate headquarters, and all of its capital stock is owned by Morgan Guaranty Trust Company of New York as was MGIBH.

The Petitioner Banks asserted in the lower Court that they were not liable for ad valorem taxes on their banking operation in Houston, Texas under 12 U.S.C. § 627, *supra,* or under Texas law. The Petitioner Banks did not contest the valuation method or the apportionment method used to assess the tax for the year 1981 on the bank shares issued by MGIB but merely asserted that the Respondent taxing units had no power or authority to levy such a tax or that no portion of MGIB's bank shares had any tax situs in Houston, Texas or within the Houston Independent School District.

On the 20th day of December, 1982, the trial court considered Petitioners' Motion for Summary Judgment and Respondents' Motion for Summary Judgment. On the 29th day of December, 1982, the 295th District Court, Harris County, Texas granted Petitioners' Motion for Summary Judgment and permanently enjoined the Respondents from attempting to collect the 1981 taxes assessed on bank shares issued by MGIB. On December 29, 1983, the Court of Appeals for the First Supreme Judicial District at Houston, Texas reversed the judgment of the trial court and rendered judgment for the Respondents. The Texas Supreme Court refused to grant a Writ of Error to review the case (no reversible error) and denied a Motion for Rehearing.

SUMMARY OF THE ARGUMENT

The Texas appellate court correctly construed the federal statute at issue herein. A review of the Congressional Record clearly shows that Congress intended to grant to the states the authority to tax the banking operations of an Edge Act Corporation operating banking facilities within their jurisdiction. There are repeated references therein to show that Congress intended that Edge Act Corporations were to be taxed in the states where they conducted their business. Furthermore, it is clear that Edge Act banks were not to be considered an agency of the United States but were simply private profit-making corporations operating under a federal charter.

At the time that the Act was passed, and for more than five decades following, interstate branch banking was prohibited. The home office was synonymous with the state in which the bank was doing business. Since the International Banking Act of 1978 did not grant tax immunity to branch banks, interstate banking operations became subject to the same rules established by this Honorable Court for state taxation of other corporations operating across state lines.

Texas law provides that once the taxing authority establishes its prima facie case of a tax delinquency, the burden is placed on the taxpayer to show that the actions of the taxing authority are discriminatory or cause substantial injury. There is no evidence in the record to show that the taxing authorities assessed any tax on MGIB other than on its banking operations within Texas. Petitioners did not show, and could not show, that any attempt was made by Respondents to tax Petitioners' banking operations in other states. Any taxpayer might allege that apportionment might subject it to the possibility of

double taxation, however, such an allegation has not prevented local taxation of other corporations conducting interstate operations.

A review on writ of certiorari will be granted only when there are special or important reasons therefor. Such reasons do not exist in this case. The Texas appellate courts have properly construed the federal and state law at issue herein; the Texas statutes authorizing a bank shares tax have been repealed for reasons not at issue in this case; and there has been only one other reported decision construing 12 U.S.C. § 627 in more than sixty years. The Writ of Certiorari requested in this case should be denied.

ARGUMENT AND AUTHORITIES

I. The Federal Statute

Petitioner MGIB is an Edge Act banking corporation chartered pursuant to Section 25(a) of the Federal Reserve Act, 12 U.S.C. §§ 611-631. Section 627 of 12 U.S.C. provides for state taxation of corporations organized pursuant to this Act and states as follows:

> § 627. State taxation
>
> Any corporation organized under the provisions of sections 611-631 of this title shall be subject to tax by the State within which its home office is located in the same manner and to the same extent as other corporations organized under the laws of that State which are transacting a similar character of business. The shares of stock in such corporation shall also be subject to tax as the personal property of the owners or holders thereof in the same manner and to the same extent as the shares of stock in similar State corporations. Dec. 23, 1913, c. 6, § 25(a), as added Dec. 24, 1919, c. 18, 41 Stat. 378.

Although six decades have elapsed since this provision was enacted by the United States Congress, it appears that only one court has had occasion to consider its practical application. In *Commonwealth v. First Pennsylvania Overseas Finance Corporation,* 425 Pa. 143, 229 A.2d 896 (1967), the Supreme Court of Pennsylvania considered the validity of applying Pennsylvania's capital stock tax to the shares of an Edge Act banking corporation doing business in Pennsylvania. Because the Edge Act banking corporation was a wholly-owned subsidiary of a Pennsylvania corporation and had its home office in Philadelphia, Pennsylvania where it was conducting all of its banking operations, the fact that the Court sustained the validity of the tax has little relevance to the issues before this Court. The Petitioners' construction of the phrase "subject to tax by the State within which its home office is located" would create a fictional tax situs in the State in which the corporation elects to place its corporate headquarters or wishes to designate as its home office in its application for a federal charter. This construction is not supported by the Congressional Record of the 66th Congress containing the floor debate concerning this Act. The Edge Act, so called in honor of Senator Edge from New Jersey as sponsor of the Act, underwent considerable debate on the floors of both the House and the Senate. The original bill contained no provisions regarding taxation. The reason for this is illustrated in the following remarks by Senator Cummins and Senator Edge:

> Mr. CUMMINS. There is no provision in this bill giving or reserving to the States the right to tax the property of the institution, as I read the bill. Does the Senator from New Jersey contemplate the

> immunity from taxation which arises from the relation of the corporation to the Government, namely as a fiscal agent of the Government?
>
> Mr. EDGE. Not at all. . . . [T]here is no intention on the part of the original compiler of the bill to have it escape taxation, . . . the mere fact that these were not recited as being exempt would mean they would be subject to taxation; but when the question was raised in conference with the Senator from North Dakota I at once accepted without hesitation an amendment which he is going to offer later which makes that clear. 58 Cong. Rec. 4955 (1919).

The aforesaid amendment was subsequently introduced; however, some of the senators had difficulty with the wording as shown by the following statements:

> Mr. NORRIS. I notice in the amendment offered the taxes are to be paid into the Treasury of the Uinted States. I understand they are to be taxed under State laws in the States where they may be doing business.
>
> Mr. GRONNA. Yes; local taxes.
>
> Mr. NORRIS. Is it the intention that these corporations shall pay like taxes to the States where they may be doing business?
>
> Mr. GRONNA. I think it would be wise to add that these banks shall pay taxes in accordance with the laws of the United States and of the States. 58 Cong. Rec. 4969 (1919).

As the Senate debate continued, Senator Edge made the following remark:

> Mr. EDGE. However, as the Senator from North Dakota and the Senator from Utah state, we want

> to make it doubly sure, and inasmuch as no one wants them to escape any taxation, State or Federal, I am entirely satisfied to have language inserted to make it clear; but I do not want to have it involved.

As the Senate continued to debate the issue, Senator Norris made the following remark:

> Mr. NORRIS. The Senator from Oklahoma makes the suggestion that these banks, located in New York and similar places, will be doing a foreign business and therefore ought not to be required to pay any State taxes. That is true; every man who does business, if he goes to New York or Boston or Baltimore, is subject to the taxes levied on the business at the place where he is located, but that is no reason why they should be relieved from taxes that other corporations doing business in those cities have to pay the States. They ought to be taxed like any other banks. There ought to be no exemption about it. If they are located in New York they get the protection of the laws of New York, and they ought to be required to pay a tax to the State of New York the same as any other corporation doing business in that State.
>
> Mr. SMITH of South Carolina. I suggest to the Senator there is likely to be confusion if he tries to define the time and place and where the corporation is to pay taxes, whereas if nothing is said about it, under the ordinary operation of the tax laws, the tax that they ought to pay will be imposed by laws already existing. 58 Cong. Rec. 4969 (1919).

The debate at this time was concluded with the remarks of Senator Norris and Senator Smith of South Carolina:

> Mr. NORRIS. If they were taxed like national banks, that ought to be satisfactory. National banks

> are taxed in the various States in which they do business, and ought to be. Nobody ever contended to the contrary, so far as I know.
>
> Mr. SMITH of South Carolina. It seems to me you are going to get these definitions to the point where you will not know what they mean. 58 Cong. Rec. 4969 (1919).

Throughout the discussion, the Congress referred to the situs for taxation as the place where the corporation was doing business, and there was no intent to create a fictional situs at the location of the corporate headquarters.

The House of Representatives had the same difficulty with the actual wording of the taxation provision of this Act. The House Committee replaced the Senate wording of this provision with an amendment that was identical to the current statute except for the following clause. This clause stated:

> *Provided, however,* That such shares owned by non-residents of any State shall be taxed only in the city or town where the corporation's home office is located, and not elsewhere. 58 Cong. Rec. 7854 (1919).

This limiting clause was ultimately defeated prior to the passage of the Act.

Representative Johnson of Texas introduced an amendment which would provide for the taxation of bank shares in the state in which the owner was domiciled, but this amendment was defeated.

It was clear to the members of the House of Representatives that interstate branch banking operations were not permitted within the United States by the Act. Since

interstate branch banking was not permitted, it was clear that the location of the corporation's home office was synonymous with the state in which the bank was doing business. In defending the committee statement, Representative Wingo made the following remarks.

> Mr. WINGO. I have always thought, and I thought so in the Committee, that this provision on page 15, that they should be taxed in the State or county in which the corporation's home office is located is not right; but here is what the Committee did in writing the taxing feature of this bill: The Supreme Court of the United States and the different courts have interpreted this language. It is copied verbatim from the National Banking Act. In other words, *we are going to make these corporations and their stock to be taxed exactly in the same manner as national banks and their stock are taxed.* It is well understood by lawyers and by the public who render their statements for the purposes of taxation. I have never yet found any answer, I may say, to the argument that the shares of stock should be taxed and assessed at the domicile of the person owning them, but Congress has thrashed that matter out several times and has insisted, and the law is now as we have brought it forward in this amendment. 58 Cong. Rec. 8108 (1919). (emphasis supplied)

The Respondents urge that the legislative intent is clear that Congress had no intent to place the situs of taxation of the shares of stock issued by Edge Act banking corporations in any location other than the state in which the corporation was actually doing business. The intent was clear that the states would have the power to tax these banks in the same manner as other national bank-

ing corporations and in the same manner and to the same extent as the shares of stock are taxed in similar state corporations. Respondents further maintain that it is clear Congress intended to and granted to the states, power to levy an ad valorem tax on Edge Act banking corporations doing business within their state boundaries.

Edge Act Banks are not, and never were, a mechanism, agency or extension of the United States Government. They are merely private, profit-seeking corporations created and organized for the benefit of their stockholders. Their connection with the government was made clear by Representative Phelan as shown by the following excerpt from the Congressional Record:

> Mr. FAIRFIELD. What liability will the government assume for the wise conduct of these institutions?
>
> Mr. PHELAN. The Government assumes absolutely no liability. These corporations are just as independent of the Government as the national banks are today. In fact, they are not quite so close, because with the national banks the Government does pay out of its Treasury money that the national banks contribute to a redemption fund to redeem notes. The Government is absolutely free of liability. 58 Cong. Rec. 8083 (1919).

The lack of connection with the Government combined with the express consent of Congress to subject these banks to state taxation dispels any conflict or argument based on the Supremacy Clause of the United States Constitution.

The International Banking Act of 1978, Pub. L. No. 95-369, 92 STAT. 607, 12 U.S.C. § 611a, contained no

provision to alter 12 U.S.C. § 627 as originally enacted by the 66th Congress in 1919. Had they wished to grant tax immunity to Edge Act banking corporations in those states where they were conducting branch banking operations, the 95th Congress could have done so, but they did not. Congress was fully aware of the fact that for more than half a century, Edge Act Banks, like banks chartered under the National Bank Act, were subject to state taxation in those states where they were conducting banking operations.

To contend that Edge Act banking corporations can select the tax situs of their shares, by selecting a state to be their home office, while conducting banking operations at locations in other states has as much merit as the contentions of the Plaintiff in Error in *Old Dominion Steamship Company v. Commonwealth of Virginia,* 198 U.S. 299 (1905). Old Dominion contended that their vessels, although engaged in interstate commerce, were taxable not in the state where they were doing business, but rather in the state where they were registered or enrolled in accordance with the federal registry. However, this Court held as follows:

> Our conclusion is that where vessels, though engaged in interstate commerce, are employed in such commerce wholly within the limits of a state, they are subject to taxation in that state, although they may have been registered or enrolled at a port outside its limits. 198 U.S. at 309.

Just as vessel owners are not permitted to create a tax situs by mere selection of a state of registry, Edge Act Banks are not allowed to select a tax situs for their interstate operations by the mere selection of a state in which to place their home office.

The Petitioners state at p. 14 of the Petition for Writ of Certiorari: "The tax at issue here is on *all* of the capital stock of MGIB; these shares represent the capital investment and value of the entire operations of MGIB." From this erroneous premise, the Petitioners assert that therefore the tax at issue bears no relation to the activities of the Houston branch of MGIB and concludes that such a tax would result in "inequitable multiple taxation." This premise and the Petitioners' conclusions are not supported by the record. The Petitioners could not and did not place any evidence in the record to show that the Respondent taxing authorities attempted to levy a tax on MGIB's branch operations in California, Florida or the Bahamas. A *prima facie* case was established for the validity of the assessed valuations made by the taxing authorities in the trial court. The method of apportionment or the resulting valuation was not contested or rebutted in the trial court, and neither issue can now be raised on appeal by implication.

II. The Federal Apportionment Law

To avoid the possibility of double taxation, this Honorable Court, in construing the Commerce Clause of the United States Constitution and the Due Process Clause of the Fourteenth Amendment of the United States Constitution as they were applied to the taxation of corporations conducting interstate business operations, has established guidelines for permissible state taxation of interstate commerce. This Court has considered banking operations to be commerce. *United States v. Philadelphia National Bank,* 374 U.S. 321, 337 (1963). In *United States v. South-Eastern Underwriters Ass'n.,* 322 U.S. 533, 551 (1944), Justice Black quoted Chief Justice Marshall

from *Gibbons v. Ogden*:[1] "Commerce is interstate, he said, when it 'concerns more states than one.' " It is clear, therefore, that interstate branch banking is interstate commerce.

An apportioned ad valorem tax on the capital stock of a corporation involved in interstate commerce was sustained by this Court prior to the turn of the century. In *Western Union Telegraph Company v. Taggart,* 163 U.S. 1 (1896), quoting from an earlier decision,[2] the Court stated:

> It never could have been intended by the congress of the United States, in conferring upon a corporation of one state the authority to enter the territory of any other state and erect its poles and lines therein to establish the proposition that such a company owed no obedience to the laws of the state into which it thus entered, and was under no obligation to pay its support.

The court went on to state:

> Those decisions clearly establish that a statute of a state requiring a telegraph company to pay a tax upon its property within the state, *valued at such a proportion of the whole value of its capital stock* as the length of its lines within the state bears to the length of all its lines everywhere, deducting a sum equal to the value of its real estate and machinery subject to local taxation within the state, is constitutional and valid . . . (emphasis supplied).

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1. 9 Wheat. 194 (1824).

2. *Western Union Telegraph Company v. Massachusetts,* 125 U.S. 530, 548 (1888).

The problem under the Commerce Clause is to determine what portion of an interstate organism may be appropriately attributed to each of the various states in which it functions. Under the Due Process Clause the only question is whether the tax in practical operation has relation to opportunities, benefits, or protection conferred or afforded by the taxing state. These requirements are satisfied if the tax is fairly apportioned to the commerce carried on within the state. *Ott v. Mississippi Valley Barge Line Co.*, 336 U.S. 169 (1949). The rule which permits taxation by two or more states on an apportionment basis precludes taxation of all of the property by the state of domicile. *Standard Oil Co. v. Peck*, 342 U.S. 382 (1952).

The Petitioners did not allege in the trial court that the taxes were discriminatory, nor did they challenge the reasonableness of the apportionment method used in arriving at the value of the assessment. Their only contention alleged that the bank shares were not properly taxable in the State of Texas or in Houston, Texas because under their construction of state and federal law, the shares would have no tax situs in Texas. *See Braniff Airways v. Nebraska State Board of Equalization and Assessment*, 347 U.S. 590, 598 (1954).

In *Complete Auto Transit, Inc. v. Brady*, 430 U.S. 274, 279 (1977) this Court established a test for determining permissible state taxation of interstate business operations. In *Complete Auto Transit*, the taxes in question were sales taxes assessed on vehicles in interstate commerce. In *Dept. of Revenue v. Association of Washington Stevedoring Companies*, 435 U.S. 734 (1978), this Court applied the same test enunciated in *Complete Auto*

Transit, in sustaining a tax levied solely on the value of unloading and loading occurring within the State of Washington. In *Japan Lines Ltd. v. County of Los Angeles,* 441 U.S. 434, 445 (1979), this Court restated the *Complete Auto Transit* test in considering a tax levied on shipping containers:

> If the state tax "is applied to an activity with a substantial nexus with the taxing State, is fairly apportioned, does not discriminate against interstate commerce, and is fairly related to the services provided by the State," no impermissible burden on interstate commerce will be found.

There is no evidence in the record to show that the apportioned ad valorem tax assessed by the Respondents on the bank shares issued by MGIB is not in full compliance with the *Complete Auto Transit* test. The record in this case clearly shows that MGIB's local banking operation has substantial nexus with the City of Houston, Texas. There is no evidence in the record which would show that the subject tax is not fairly apportioned, that the tax discriminates against interstate commerce or that no services, benefits or protection are provided to said banking operation by the City of Houston or the Houston Independent School District.

III. The Texas Law

The Texas Supreme Court in the recent case of *Davis v. City of Austin,* 632 S.W.2d 331 (Tex. 1982) reaffirmed the principle that a taxing authority establishes its *prima facie* case as to every material fact necessary to establish the cause of action when it introduces a copy of the de-

linquent tax record, certified by the proper taxing authority to be true and correct with the amount stated thereon to be unpaid.

When evidence was introduced showing that taxes were due, delinquent and unpaid, a prima facie case for the validity of the assessed valuations and the collection of such taxes was made. *Alamo Barge Lines, Inc. v. City of Houston,* 453 S.W.2d 132 (Tex. 1970); *Coffee v. City of Alvin,* 641 S.W.2d 597 (Tex. Civ. App.—Houston [14th Dist.] 1932, writ ref'd n.r.e.); *City of Corpus Christi v. Davis,* 575 S.W.2d 46 (Tex. Civ. App.—Corpus Christi 1978, no writ).

In *Houston Crane Rentals, Inc. v. City of Houston,* 454 S.W.2d 216 (Tex. Civ. App.—Houston [1st Dist.] 1970, writ ref'd n.r.e.), the Court held that when the City of Houston made the certified copy of the tax statement a part of its Motion For Summary Judgment, it made out its *prima facie* case.

When the taxing authority introduces the tax rolls into evidence, together with evidence that the tax has not been paid, it makes out a *prima facie* case, which is to say that the authority need not prove the validity of its assessment, the lawfulness of its tax rate, or the taxpayer's ownership of the property. *Hays Consolidated Independent School District v. Valero Transmission Company,* 645 S.W.2d 542, 546 (Tex. Civ. App.—Austin 1982, writ ref'd n.r.e.).

In *Michelin Tire Corporation v. Wages,* 423 U.S. 276, 289 (1976) in sustaining an ad valorem tax on an importer's merchandise, this Court made the following statement:

> But as already noted, such taxation is the *quid pro quo* for benefits actually conferred by the taxing state. There is no reason why local taxpayers should subsidize the services used by the importers; ultimate consumers should pay for such services as police and fire protection accorded the goods just as much as they should pay transportation costs associated with these goods.

This doctrine of *quid pro quo* for benefits actually conferred by the taxing state referred to above has been used by the Texas Courts. In *Texas Land and Cattle Company v. City of Fort Worth,* 73 S.W.2d 860, 864 (Tex. Civ. App.—Forth Worth 1934, writ ref'd), the Court stated as follows:

> We are not only satisfied that this method of taxation is well founded in principle and upon authority, but we think it entirely just and equitable, that, if persons residing abroad bring their property and invest it in this state, for the purpose of deriving profit from its use in employment here, and thus avail themselves of the benefits and advantages of our laws for the protection of their property, their property should yield its due proportion towards the support of the government that protects it.

The basic principle upon which the taxation of personal property rests in Texas is the common law rule of *mobilia sequuntur personam*:

> So far as applied to taxation, it merely means that the situs of personal property for purposes of taxation is the domicile of the owner unless (1) there is a statute to the contrary, or (2) the property is tangible and has acquired an actual situs of its own in a state or place other than where the owner

> is domiciled, or (3) *in the case of intangible property, it has acquired a business situs in a state other than the one where the owner is domiciled. State v. Crown Central Petroleum Corporation,* 242 S.W.2d 457, 461 (Tex. Civ. App.—San Antonio 1951, writ ref'd). (emphasis supplied)

Texas constitutional and statutory provisions for taxing property owned by corporations make no distinction between that owned by domestic and that owned by foreign corporations. However, in interstate relationships, foreign corporations are domiciled in the state where incorporated, but the equivalent of a local domicile for purposes of doing business in Texas is at their principal place of business in the State when one has been established. *Greyhound Lines, Inc. v. Board of Equalization for the City of Fort Worth,* 419 S.W.2d 345 (Tex. 1967). In Texas, the tax assessor is authorized to adopt an apportionment formula as the basis for taxing property within its jurisdiction in the absence of enabling legislation. *Greyhound Lines, Inc. v. Board of Equalization for the City of Fort Worth, Id.*

The fiction that personal property follows the domicile of its owner should not be allowed to obscure the truth. There is no doubt that the Respondent taxing authorities have the most significant contact with MGIB's Houston banking operation. This contact justifies the fairness of the collection of a tax to help support these taxing units which provide benefits and protection. *See Nacogdoches Independent School District v. McKinney,* 504 S.W.2d 832, 838 (Tex. 1974).

It is clear that Texas law provides for an apportioned tax on Edge Act banking corporations at the place where

they are "located" or conducting their business operations in Texas. To allow an out-of-state corporation to invest capital within Texas to take advantage of the economic environment created by the local community, to take advantage of the benefits, protection and services offered by local government, and then to remove the profits to another state without paying any taxes to support the local community, is wholly unjust and in contravention of the law. The apportioned ad valorem taxes levied by the Respondents in this case are authorized under both state and federal law.

CONCLUSION

Public policy dictates that each profit-making business operating within a community be required to pay its fair share of taxes to support the local municipalities that provide the benefits, protection and services which create a profitable economic environment. To allow any business to enter a state and operate in a tax-immune status creates an additional burden on local taxpaying citizens which is flagrantly inequitable and fosters unfair competition. Neither the Congress nor the Legislature ever intended for such an inequity to exist. The ad valorem taxes which are the subject of this case are valid under both state and federal law. The Court of Appeals correctly reversed the judgment of the trial court and correctly rendered judgment for the taxing authorities. No error is presented, and no harm is shown. Petitioners' Application for Writ of Certiorari should be denied. As the Honorable Justice Jackson stated in *Herb v. Pitcairn*, 324 U.S. 117, 125 (1945), *rev'd on other grounds*, 325 U.S. 77 (1945): "Our only power over state judg-

ments is to correct them to the extent that they incorrectly adjudge federal rights."

Respectfully submitted,

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CERTIFICATE OF SERVICE

I have on this _____ day of January, 1985, forwarded a true and correct copy of the foregoing Brief Opposing the Petition for Writ of Certiorari to Mr. Larry F. York, Baker & Botts, 1410 United Bank Tower, 400 West Fifteenth Street, Austin, Texas 78701 by Certified Mail, Return Receipt Requested, No. P657772559.

_____

EDWARD A. CAZARES